IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.202 OF 1995

Shri.Gajanan Pandurang Baindur]
C/o Mazgaon Docks Ltd.]
Bombay-400010]..Petitioner

Vs.

1. State]
Through the Central]
Bureau of Investigation]
(Special), Bombay Kitab]
Mahal, D.N.Road,]
Bombay-400001]
]
2. Shri.A.H.Shah]
Special Judge, Court of]
Sessions at Greater Bombay]..Respondents

....

Mrs.Meena H.Doshi Advocate for Petitioner
Mr.H.V.Mehta Advocate for Respondent no.1
Mr.A.S.Shitole A.P.P. for State.

....

WITH

(2) CRIMINAL WRIT PETITION NO. 458 OF 1993

Mr.M.L.Shah]
3, Veenita, 21/3, Tilak Road]
Wadala, Bombay-400031]..Petitioner

Versus

1. The Central Bureau of]
Investigation (special)]
Kitab Mahal, D.N.Road,]
Bombay-400001]
]
2. The State of Maharashtra]..Respondents

....

Mr.R.A.Shaikh, Advocate for the Petitioner
Mr.H.V.Mehta Advocate for Respondent no.1

Mr.A.S.Shitole, A.P.P. for the State.

....

CORAM: SMT.V.K.TAHILRAMANI,J.
DATE OF RESERVING
THE JUDGMENT : 15.9.2004

DATE OF PRONOUNCING
THE JUDGMENT : 23.9.2004

ORAL JUDGMENT:

1. Gajanan Pandurang Baindur petitioner in W.P.No.202 of 1995 is the original accused no.1 in Special Case No. 41 of 1980. The said case is under Sections 420, 468, 471, 120-B read with Section 34 of IPC and Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act. M.L.Shah the petitioner in W.P.No. 458 of 1993 is original accused no.1 in Special Case No. 38 of 1979. The said case is under Sections 420, 468, 471, 120-B read with Section 34 of IPC and Sections 5(2) read with Sections 5(1)(d) of the Prevention of Corruption Act, 1947. These two petitions have been preferred for quashing of the said proceedings in Special Case No. 41 of 1980 and 38 of 1979.

2. I have heard Meena Doshi the learned advocate for the petitioner Mr.G.P.Baindur in W.P.No. 202 of 1995 and Mr.Shaikh learned advocate appearing for the petitioner Mr.M.L.Shah in W.P.No. 458 of 1993.

I have also heard Mr.H.V.Mehta the learned counsel for the respondent-Central Bureau of Investigation and Mr.A.S.Shitole the learned A.P.P. for the State in both the matters. I have also perused the material pertaining to the present case.

3. It is undisputed position that both the cases i.e. Special Case Nos. 38 of 1979 and 41 of 1980 are to be tried together, and the charges in respect of both these petitioners are also more or less identical, in the circumstances, it would be convenient to dispose of both these petitions by this common judgment and order.

4. Both the petitioners had earlier preferred applications for discharge before the learned Special Judge. The said applications for discharge came to be dismissed on 31st March, 1992. Thereafter, the present writ petitions have been preferred. On 7th December, 1995 rule came to be issued and the proceedings in both the cases pending before the Special Judge, came to be stayed. It may be stated here that the applications for discharge came to be preferred mainly on the ground that there was delay in the trial. It is alternative it is orally submitted before me that there is no material at all against the petitioners which connects both

the petitioners with the offence and hence, the petitioners may be discharged from the said cases or the cases be quashed.

5. The learned advocates for the petitioners have relied upon several authorities on the aspect of delay. Shri.H.V.Mehta the learned counsel appearing for Central Bureau of Investigation has submitted that both the petitioners are also facing the charges under the Prevention of Corruption Act and hence, these decisions would not be applicable to the present case. Mr.Mehta has also placed reliance on the judgment of the Supreme Court in the case of **P.Ramchandra Rao Vs. State of Karnataka reported in (2002) 4 S.C.C. 578.** Shri.Mehta has submitted that this decision is delivered by the Bench of the Supreme Court comprising of seven Judges and all the other decisions on which reliance has been placed on behalf of the petitioners are delivered by the Bench of the Supreme Court comprising of less than seven Judges. Moreover, he has submitted that the decision in the case of **P.Ramchandra Rao** is the latest judgment of the Apex Court on this point and in the said judgment the previous judgments on the point of delay have been considered. In the judgment of P.Ramchandra Rao, it has been observed as under:

. "At the most periods of time prescribed in those decisions can be taken by the courts in seisin of the trial or proceedings to act as reminder when they may be persuaded to apply their judicial mind to the facts and circumstances of the case before them and determine by taking into consideration several relevant factors as pointed in *A.R.Antulay case* and decide whether the trial or proceedings have become so inordinately delayed as to be called oppressive and unwarranted. Such time-limits cannot and will not be treated by any Court as a bar to further trial or proceedings and as mandatorily obliging the Court to terminate the same and acquit or discharge the accused."

. In view of the decision of the Supreme Court in the case of P.Ramchandra Rao (supra), I am not inclined to quash the proceedings in the aforesaid two Special Cases pending before the learned Magistrate on the ground of delay. In these proceedings also the petitioners-accused are facing serious charges including those of corruption.

6. On behalf of petitioners, reliance has been placed on two decisions of the Supreme Court which have been rendered after the decision in the case of P.Ramchandra Rao (supra). The said decisions are in the case of State through **Central Bureau of Investigation Vs. Dr.Narayan Waman Nerurkar reported in 2002(7) SCC 6 and State of Bihar Vs.**

Baidnath Prasad alias Baidyanath Shah and Another reported in (2002) 1 S.C.C. 465. In both the said cases, the point of delay in the trial was raised. However, in both the cases, the Supreme Court has observed that the High Court has erred in quashing proceedings on the ground of delay in proceedings of the case. On the other hand on behalf of the respondents reliance is placed on the case of **Jagdish Ram Vs. State of Rajasthan and another reported in (2004) 4 S.C.C. 432** wherein, there was a delay of 19 years. The Supreme Court has held that that it was not a good ground to quash the proceedings. It was further observed that it was due to the appellant (accused) that the criminal proceedings before the Magistrate did not cross stage of taking cognizance. It was also observed that the offence in question relating to untouchability was a serious one and hence, no case was made out to quash the proceedings on the ground of delay. In the present case also from the affidavit of Ms.S.B.Kumra, Police Inspector, ACB, CBI, Mumbai filed on behalf of respondent, it is seen that delay has been caused in respect of framing of charge on account of the petitioners. In the said affidavit, it is stated that the petitioners were furnished the copy of the charge-sheet around 28.8.1979 together with all the

relevant documents. The said documents were legible. The respondents were ready and willing to proceed with the matter as expeditiously as possible, however, the petitioners from time to time used to say that the documents are illegible. In fact, the Public Prosecutor on several occasions asked the petitioners that whichever documents are illegible documents, can be exchanged but the petitioners have not responded to the said request. In view of this position, the respondents had to make an application to the Special Court to direct the petitioners to return the copies of the documents which are illegible to enable the respondents to supply fresh copies of the same, but there was no response from the petitioners. In June, 1980, the case was specifically fixed for framing of charge but the Court could not do so as the Court was busy and the accused also remained absent. The draft charges were prepared and the matter was adjourned for considering the charges. However, thereafter from time to time the petitioners raised grievance that the copies of the documents which were furnished to them were illegible. Thereafter, the present petitions have been filed in the year 1993 and 1995 and stay has been obtained by the petitioners in the present case. In such case, it cannot be said that the

prosecution is responsible for causing delay in the trial. Looking to the averments in the reply there appears to be some merit in this submission. Moreover, looking to the fact that the charges in the present case are also of a serious nature i.e. prevention of corruption and on perusal of the material and the case law cited above, I am not inclined to quash the proceedings only on the ground of delay.

7. The proceedings in a case, can be quashed only when there is not enough material to proceed with the trial in the said case. Keeping this aspect in mind, I have perused the material relating to both the cases. At the time of incident, the petitioner M.L.Shah was working as a Purchase Officer and the petitioner Gajanan Baindur was working as an Assistant Purchase Officer. They were working in Mazgaon Docks Ltd. (hereinafter referred to as "MDL") during the period from June 1976 to May 1977. In the absence of M.L.Shah, G.B.Baindur was attending to the work of direct purchase. It is the prosecution case that the petitioners while functioning as public servants entered into a criminal conspiracy with Shri.Jaywant Pai (accused no.2). The common object of the conspiracy was to give contracts to Pai Motor Company at exorbitant

rates on the basis of false and forged quotations obtained in the name of M/s. Sabrawal Brothers and M/s. Evershine Automobiles. The petitioners used to show the lowest rates of Pai Motors vis-a-vis other two companies in the rates charge of the parties. The procedure for making the enquiries from different suppliers and collecting quotations from different suppliers was not followed. The draft purchase orders showed the rates of Pai Motors Company to be the lowest. The quotations of Pai Motors Company and two other quotations i.e. of M/s. Sabrawal Brothers and M/s. Evershine Automobiles, were forwarded to the competent authority. In many cases, it was found that M/s. Pai Motors Company had delivered the goods without purchase orders being issued to it and at the time of delivery of goods, the rates were also not recorded on the delivery chalans which was in contravention of the conditions of purchase orders. During the said period, goods valued at Rs.49,688/- had been purchased for Rs.1,46,555-59 by the petitioner M.L.Shah resulting in loss of revenue to the extent of Rs.97,058-51 ps. to MDL and the goods valued at Rs.22,398-14 had been purchased for Rs.63,981/- by petitioner G.B.Baindur resulting in loss of revenue to the extent of Rs.41,582-86 to MDL.

8. On behalf of the petitioners, it has been argued that there was no loss to MDL as no money was received by M/s. Pai Motors Co. from MDL in relation to the transactions in question. It is submitted that in respect of these transactions, as no money was received by Jaywant Ramji Pai of Pai Motors Co. he filed Short Cause Suit No. 785 of 1979 in this Court against MDL for recovery of an amount of Rs.2,94,553-48. Thus, it is submitted that there is no wrongful gain to Pai Motors Co. and no wrongful loss to MDL and hence, no case is made out against both the petitioners. However, I do not find this argument to be very attractive on two grounds, the first ground is that the said suit came to be withdrawn on 28th February, 2000 and secondly one cannot loose sight of the fact that the petitioners are not facing a prosecution only under Section 420 of IPC but they are also facing prosecution under various other Sections i.e. 468,. 471, 120-B read with Section 34 of IPC and 5(2) and 5(1)(d) of Prevention of Corruption Act. Only if no case is made out against the petitioners under any of the sections with which they have been charged, only then, can the case against them be quashed.

9. I have perused the material in the case against

both the petitioners and I find that there is prima facie sufficient material against them to show their complicity in the crime. The first was the statement of Shri.Anand Bapat. Shri.Anand Bapat was working in the purchase department of MDL at the relevant time. He has stated that Mr.M.L.Shah the Purchase Officer, was looking after the purchase of auto spare parts, crane parts etc. In the absence of Mr.M.L.Shah, Mr.G.P.Baindur was attending to the work of direct purchase. Anand Bapat has stated that he was working under Mr.M.L.Shah and was attending to clerical work under his instructions. In the absence of Mr.M.L.Shah, he was working under Mr.G.P.Baindur who was giving him directions.

. Shri.Anand Bapat has further stated that the procedure for direct purchase was that on receipt of written Direct Purchase forms duly filled by the main stores, a comparative statement was prepared and tender forms were despatched to the suppliers by post. In case of urgency of the material, the suppliers were directly contacted by telephone by the Purchase Officer for rates without sending the tender form and to send their quotations immediately in the Tender Box, which was opened regularly. Then the material was obtained by telephonic talk, the same was recorded in comparative chart, placed

before the competent authority for approval. Shri.Anand Bapat has further stated that in the terms and conditions printed in the Tender form there is no mention that the quotations should be delivered to the Purchase Officer directly. On receipt of the quotations, through tender box, tenders are opened by the tender opening Committee and the members of the committee sign on each and every quotation received by them as well as on the comparative chart and the papers are placed before the Purchase Officer for issuing Purchase Orders amongst the parties who have offered their lowest price.

. Anand Bapat has clearly stated that the procedure mentioned by him was not followed by the Purchase Officer in some purchases and they were directly collecting quotations from the suppliers i.e. M/s. Pai Motors Co. and the quotations so collected, were given to this witness for writing their rates at the right side of the direct purchase order. He has stated that though these quotations were not obtained by the Tender opening committee and their signatures did not appear on the quotations, even then, he was asked by the Purchase Officer to write the rates on the direct purchase order. Anand Bapat has further stated that he was working under the

directions of Purchase Officer and he was not responsible to collect and select the supplier and the rates.

. Anand Bapat has further stated that he has seen Jaywant Pai (accused no.2) and Shri.U.M.Shenoy visiting MDL on behalf of Pai Motors Co. and they were directly discussing with Mr.M.L.Shah and in his absence with Mr.G.P.Baindur. Anand Bapat has also stated that the quotations of M/s. Pai Motors Co. were given to him directly by the Purchase Officer for writing their comparative rates on the Direct Purchase Order at right side. Along with the quotations of M/s. Pai Motors Co., quotations of M/s. Evershine Automobiles and M/s. Sabrawal Bros. were also given to him. He recorded their rates on the direct purchase order and enclosed the same with the direct purchase orders and forwarded the same to the competent authority for approval. This witness was shown many direct purchase orders signed by G.P.Baindur and some direct purchase orders signed by Mr.M.L.Shah. Anand Bapat has further stated that purchase officer who signed these direct purchase orders i.e. Mr.M.L.Shah and Mr.G.P.Baindur were responsible for collecting the quotations and after that they have given the same to him for writing the rates.

10. The statement of Kailash Varma has been recorded. Kailash Varma was working in the purchase department as a clerk at the relevant time. He was working in the purchase section of MDL and his job was to assist Mr.M.L.Shah, Purchase Officer and in his absence, Mr.G.P.Baindur, Assistant Purchase Officer. This witness has stated about the procedure for making enquiry in respect of any direct purchase order. He has stated that on receipt of direct purchase order form duly filled in by main stores, a comparative statement is prepared on which the names of the supplier is recorded and the tender enquiry is sent to various suppliers. Suppliers are asked to send their quotations in sealed cover covering tender enquiry number either directly in the tender opening box or by post. In case quotations are received by post, they are dropped in the tender box. It is mentioned in column no.12 of the terms and conditions contained in the tender for supply of stores that the tender should be deposited in the tender box kept at the main Gate of the MDL or post the same quoting the tender number and closing the date so as to reach the Asstt.Material Manager, MDL on or before the closing date and time specified therein. The tender form was filled by him in the name of different

suppliers, sometime it was sent for typing. These forms were filled by him when he was asked by the purchase officer. The reply of the tenders were received by the Tender Opening Committee consisting of one member from the Purchase Department and one from the Accounts Department. The officer who opens the tender also signs the tender quotation and comparative statement. After their signatures, the papers are placed before the purchase officer who selects suitable supplier (specially the lowest) for placing Purchase Order and orders are placed with the competent authority for approval. This procedure was known to Shri.M.L.Shah and Shri.Baindur who were signing the same from time to time.

. Kailash Varma has stated that he has seen that Mr.M.L.Shah and Mr.G.P.baindur were not following the above laid down procedure and they were directly accepting quotations from the suppliers and after collecting the same they were giving these quotations to him for writing the name of the parties in the comparative statement of tenderers in the right side of the direct purchase order. He has further stated that in other cases, when the purchase officer was directly collecting the quotations from the supplier, then the purchase

order was first entered in the register and then forwarded to the competent authority for signature. He was shown some of the direct purchase orders signed by Mr.M.L.Shah involved in the present case, he has stated that Mr.M.L.Shah, Purchase Officer has given quotations of M/s. Sabrawal Bros., M/s. Pai Motor Co. and M/s. Evershine Automobiles to him for recording their rates on the right side of the purchase orders and the same was done by him. This witness has further stated that the proprietor of M/s. Pai Motor Co. Shri.J.R.Pai was sometimes visiting the purchase department and he was directly contacting the purchase officer Shri.M.L.Shah. Sometimes, Shri.U.M.Shenoy was also visiting on behalf of Pai Motors Co. Mr.Sadanand Pai was regularly visiting MDL and he was directly contacting Mr.M.L.Shah. He was also shown direct purchase orders signed by Shri.G.P.Baindur and he has stated that Shri.G.P.Baindur, Purchase Officer has given him three quotations of M/s./ Pai Motor Co., M/s. Sabrawal Bros. and M/s. Evershine Automobiles for recording their rates and the same was done by him. He has further stated that he has entered the same in the direct purchase register and placed the papers before Shri.G.P.Baindur who also signed the direct purchase order. The quotations of the suppliers and the direct purchase orders were

forwarded to the competent authority for their approval and then copies of direct purchase orders were delivered to the supplier and the concerned section of MDL. In addition to this, this witness has stated that in the absence of Shri.M.L.Shah, Shri.G.P.Baindur was looking after his work. He was responsible for collecting quotations which have been signed by him. He had directly collected quotations from the suppliers without following the procedure of opening tenders by the tender opening committee. This witness has stated that he recorded the rates of the suppliers under instructions of Shri.G.P.Baindur who had given him the quotations.

11. From the statement of Anand Bapat, it is seen that the petitioners were directly collecting the quotations from M/s. Pai Motors Co. along with the quotations of M/s. Evershine Automobiles and M/s. Sabrawal Bros. The statement of Shri.Raman Sabrawal, whose father is the proprietor of M/s.Sabrawal Brothers, has been recorded. Sabrawal Brothers was dealing with sale of jeep and car parts. He has stated that the shop of Jaywant Pai was almost adjacent to the shop of this witness. Raman Sabrawal has stated that Sabrawal Brothers has never supplied any material to MDL and had no desire to do the same. He has stated that Jaywant Pai

accused no.2 had asked him to write quotations on the quotation pad of M/s. Sabrawal Brothers showing a higher rates than the rate quoted by Jaywant Pai. This witness informed his father about this, who prohibited him from writing the quotations on the directions of Jaywant Pai and his father instructed him to stop dealing with Jaywant Pai. After that no quotation was issued by this witness to Shri.Jaywant Pai or his employee in the name of Purchase Officer of MDL. This witness was shown various quotations on letter head of M/s. Sabarwal Bros. and he has stated that they are in the handwriting of Shri.U.M.Shenoy who was working for Pai Motors.

12. The statement of Mr.Kirit Champaklal Mapara who is the partner of M/s. Evershine Automobiles, has been recorded. His shop is almost next to the shop of Jaywant Pai (accused no.2). He has stated that during the period from July 1976 to May 1977, he had not issued any quotations to MDL. He was shown various quotations signed by Shri.G.P.Baindur as well as Shri.M.L.Shah and he has stated that these quotations were not issued on the quotations pad used by Evershine Automobiles. The colour of the quotation letter pad and trademark on it, is different from the one used by M/s.Evershine Automobiles. He has further stated that he had not

authorised any person to sign as Manager of M/s. Evershine Automobiles. Moreover, there is no post of Manager in his firm. This witness has clearly stated that Mr.M.L.Shah, Purchase Officer of MDL is not known to him and he has never visited his shop for verification of rates and collection of quotations.

13. It is pertinent to note that in normal cases on receipt of direct purchase order (DPO), a comparative statement is prepared on which the name of the supplier is recorded and the tender enquiry is sent to various suppliers. Suppliers are asked to send their quotations in sealed cover covering tender enquiry number either directly in the tender opening box or by post. In case quotations are received by post, they are dropped in the tender box. In case of urgency of material, the suppliers were directly contacted by telephone by the Purchase Officer for rates without sending the tender form and asked to send their quotations immediately in the Tender Box, which was opened regularly. When the material was obtained by telephonic talk, the same was recorded in comparative chart and placed before the competent authority for approval. From the statement of Raman Sabarwal of Sabarwal Bros. and the statement of Kirit Mapara of Evershine

Automobiles, it is clear that both these concerns were not contacted by any of the petitioners on telephone or in person to find out their rates, nor did they receive the tender enquiries by post. It was the job of the petitioners to contact suppliers and get quotations from them. It is clear that the petitioners had never contacted these two suppliers, yet quotations were received from them which were always higher than those of Pai Motors and Pai Motors was always awarded the contract. From these circumstances, a criminal conspiracy can clearly be inferred between the petitioners and Jaywant Pai of Pai Motors. It may also be mentioned here that in all cases, quotations from only three parties were received i.e. Evershine Automobiles, Sabrawal Brothers and Pai Motors. The quotations of Pai Motors was always lower than the other two but the quotations of Pai Motors was much higher than the market. In fact, the rates of Pai Motors were exorbitant compared to the market rates.

14. During the course of investigation, the statement of one Dilip Mehta who was working with Sabrawal Brothers, during the relevant time, has also been recorded. He has stated that the shop of Sabrawal Brother is near the shop of M/s. Pai Motors. Shri. Jaywant Pai is the proprietor of

M/s. Pai Motors. Shri. Pai has employeed Shri.U.M.Shenoy. Mr.Shenoy, Mr.V.V.Sathe, Shri.Raju and Shri.Mohd. Inus. They are working for M/s. Pai Motors. He has stated that Shri.Jaywant Pai was the only supplier of material to MDL. Dilip Mehta has stated that he is conversant with the handwriting of Mr.U.M.Shenoy. This witness was shown the quotation in the name of M/s. Sabrawal Brothers signed by Shri.Baindur as well as Shri.Shah. The said quotations bore the signatures of this witness i.e. Dilip Mehta. He has stated that these signatures had been forged without his knowledge. The quotation pads in questions were also different from the quotation pads used by M/s. Sabrawal Brothers. On going through the quotations, he confirmed that the quotations are in the handwriting of Shri.U.N.Shenoy.

15. So also during the course of investigation, statement of Sadanand Pai has been recorded. Sadanand Pai has stated that he had worked in the shop of Jaywant Pai of Pai Motors during the relevant period. The work allotted to him was to purchase all material from the dealers of auto spare parts. Shri.U.M.Shenoy also did similar work. He has stated that as part of his work, he was visiting the purchase Section of MDL for finding out their

requirements. Therefore, he contacted Shri.M.L.Shah Purchase Officer and Shri.G.P.Baindur, Assistant Purchase Officer who dealt with direct purchase of spare parts. He has stated that these officers used to orally ask him to write direct purchase order number and make of material. The same particulars after writing on paper, was given to Shri.Jaywant Pai. Then delivery challans were made on the basis of information collected from the Purchase Officer/Assistant Purchase Officer. Then the original sheet on which direct purchase order number and make was recorded by him, was destroyed.

. This witness has further stated that Shri.Jaywant Pai and Shri.U.N.Shenoy were also visiting the purchase department for finding out their requirements. The officers of MDL i.e. Shri.M.L.Shah and Shri.G.P.Baindur had directed him to deliver the materials and told him that purchase orders will be issued subsequently. At the time when direct purchase order number and make was orally told to this witness, there was no any intimation regarding the rate at which the material was purchased. The delivery chalans were left blank at the space of rate column. Then the Direct purchase orders were issued giving the number and date which were already told to him by Shri.M.L.Shah

and Shri.G.P.Baindur. Sadanand Pai had handed over the quotations to Shri.M.L.Shah and Shri.G.P.Baindur any of whom, was found present by him. The direct purchase order was then issued on which the rates quoted by him (Sadanand Pai) were shown to have been accepted. Sadanand Pai has further stated that Shri.Jaywant Pai was asking him to write quotations and the rates as told by him and he was doing the same. Then he was contacting Shri.M.L.Shah and Shri.G.P.Baindur for the direct purchase orders. Both these officers Shri.M.L.Shah and Shri.G.P.Baindur were giving him number of the purchase orders without taking his signatures on any register or papers. Shri.U.N.Shenoy was also visiting MDL purchase department for collecting the direct purchase orders. Then bills were prepared and deposited in the account section and dispatched for payment. The cheques collected by this witness, were handed over to Jaywant Pai.

. It is material to note that Shri.Sadanand Pai has stated that Shri.M.L.Shah, Purchase Officer, was sometimes asking him to write quotations for issuing the purchase orders to the other suppliers. Shri.M.L.Shah was also giving him the rate of supplier above which, the quotation was to be issued by Sadanand Pai and was giving the same to

Shri.M.L.Shah. Sadanand Pai has further stated that the materials were purchased in MDL without quotation and subsequently two other parties were asked to write the quotations above the rates of parties from whom the materials were purchased. In this connection, it is pertinent to note that Shri.M.L.Shah was the Purchase Officer and Shri.Baindur was the Assistant Purchase Officer.

. Sadanand Pai has further stated that in most of the cases Shri.M.L.Shah himself was asking him to write quotation showing the rate of Pai Motors Co. above the rate told by him. At the time when Sadanand Pai was writing the quotation, he was told that quotations are taken to justify the rate of other suppliers from whom the materials are purchased. Sadanand Pai has further stated that sometimes, Shri.M.L.Shah was managing quotations from other suppliers and justifying the rate quoted by him i.e. Sadanand Pai.

16. On behalf of the petitioners, it is submitted that there is no material to show that petitioners had engaged in a criminal conspiracy in respect of purchase of material by MDL. It is further submitted that no witness has stated that he had seen the petitioners entering into agreement with

the co-accused Shri.Jaywant Pai.

. In the present case, both the petitioners are also facing the charge under Section 120-A i.e. criminal conspiracy. It is well settled that conspiracy can be proved by circumstantial evidence from which an inference of agreement to commit an offence may be legitimately brought. The Apex Court in the case of **Suresh Chandra Bahri Vs. State of Bihar reported in 1995 Suppl(1) SCC 80,** has observed that the provisions of Section 120-B do not require that each and every person who is party to the conspiracy must do some overt act towards fulfilment of the object of the conspiracy. Conspiracy from its very nature would be concealed and hatched in complete secrecy because otherwise the whole purpose may be frustrated and it is common experience and goes without saying that only in very rare cases, one may come across direct evidence of criminal conspiracy to commit any crime. In most of the cases it is only circumstantial evidence which is available from which an inference giving rise to the conclusion that the agreement between two or more persons to commit an offence may be legitimately drawn.

17. In a case of criminal conspiracy when the

offence consists of a chain of actions, it is not necessary that each of the conspirators must know what the other conspirators would do. When the ultimate offence consists of chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirator had knowledge of what the collaborator would do.

. Section 228 of Code of Criminal Procedure is quite clear that if after consideration of the material and after hearing, the Judge is of the opinion that there is ground for presuming that the accused has committed an offence, the charge can be framed against him. In the present case, there is sufficient material for presuming that both the petitioners have committed an offence.

. It would be useful to quote the observation of the Supreme Court in the case of **State of Maharashtra and others Vs. Som Nath Thapa and others reported in 1996 (4) S.C.C. 659.** In the said case, the question which came up for consideration is whether charges should be framed or not. The Supreme Court held that the test which has to be applied is the test of existence of a prima facie case. If there is a ground for presuming that

the accused had committed offence, it can be said that prima facie case has been made out against the accused. Even if the Court thinks that accused might have committed the offence, it can frame the charges. If there is ground for presuming that accused had committed the offence, the Court can justifiably say that a prima facie case against him exists and so frame the charge against him for committing that offence.

. In para 31 and 32 of the decision in the case of **Som Nath Thapa (Supra),** it is observed as under:

> . "Let us note the meaning of the word 'presume'. In Black's Law Dictionary it has been defined to mean "to believe or accept upon probable evidence". (emphasis ours). In Shorter Oxford English Dictionary it has been mentioned that in law 'presume' means "to take as proved until evidence to the contrary is forthcoming", Stroud's Legal Dictionary has quoted in this context a certain judgment according to which "A presumption is a probable consequence drawn from facts (either certain, or proved by direct testimony) as to the truth of a fact alleged". (Emphasis supplied). In Law lexicon by P.Ramanath Aiyer the same quotation finds place at Pg.1007 of 1987 Edn.
>
> . The aforesaid shows that if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the accused might have

> committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence.
>
> . It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage."
>
> [EMPHASIS SUPPLIED]

. Looking to the material on record, it can prima facie, be said in case of both the petitioners that they have committed the offence. Therefore, this is not a case wherein the accused can be discharged.

18. As stated earlier, the main prayer is for quashing the prosecution in this connection, the view taken by the Supreme Court in the **State of Karnataka Vs. L.Muniswamy reported in (1977) 2 SCC 699** and in the case of **R.S.Naik Vs. A.R.Antulay reported in (1986) 2 SCC 716** is to be noted. In the case of **Muniswamy,** the prayer was for quashing the proceedings on ground of insufficiency of material and the case of **A.R.Antulay** pertained to discharge. The observations in the case of **L.Muniswamy and A.R.Antulay** are reflected in paras 28 and 30 of the decision in the case of **Som Nath Thapa (supra).** The said observations are:

> . "28. Before adverting to what was stated in Antulay case let the view expressed in State of Karnataka V. Muniswamy be noted. Therein, Chandrachud J. (as he then was) speaking for a three-Judge Bench stated (at SCR p.119: SCC P.704) that at the stage of framing the charge the court has to apply its mind to the question whether or not there is any ground for presuming the commission of the offence by the accused."
>
> . 30. In Antulay case, Bhagwati, C.J., opined after noting the difference in the language of the three pairs of sections, that despite the difference there is no scope for doubt that at the stage at which the court is required to consider the question of framing of charge, the test of "prima facie" case has to be applied. According to Shri.Jethmalani, a prima facie case can be said to have been made out when the evidence, unless rebutted, would make the accused liable to conviction. In our view, a better and clearer statement of law would be that if there is ground for presuming that the accused has committed the offence, a court can justifiably say that a prima facie case against him exists, and so, frame a charge against him for committing that offence."
>
> **[EMPHASIS SUPPLIED]**

19. The petitioners are also facing a charge under the Prevention of Corruption Act. It has been submitted on behalf of petitioners that the residence of both the petitioners has been searched and nothing has been found in the premises to justify the charge under the Prevention of Corruption Act. It has been further submitted that no disproportionate assets have been found with the

petitioners hence, it cannot be said that any case is made out against them under the Prevention of Corruption Act. However, in this connection, it may be stated that both the petitioners are not facing charge of disproportionate assets but they are facing charge under Sections 5(2) and 5(1)(d) of the Prevention of Corruption Act. The relevant provisions of Sections 5(2) read as under:

> .5(1) A public servant is said to commit the offence of criminal misconduct in the discharge of his duty--
>
> (a) ......
> (b) ......
> (c) ......
>
> (d) if he, by corrupt or illegal means or by otherwise abusing his position as public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage.
>
> (2) Any public servant who commits criminal misconduct in the discharge of his duty shall be punishable with imprisonment for a term which may extend to seven years or with fine, or with both."

20. From the statements of witnesses which have been reproduced above, prima facie, it can be said that both the petitioners have committed criminal misconduct in the discharge of their duties, hence, prima facie case under the Prevention of Corruption Act is clearly made out against the petitioners.

21. In the present case, looking to the entire material on record, in my view, there is sufficient material to come to the conclusion that a prima facie case exists against the petitioners. There is more than sufficient material to come to the conclusion that the petitioners might have committed the offence or in another words, there is sufficient material to presume that the petitioners are involved in the present case.

22. Thus, I do not find it a fit case to quash the proceedings or discharge the petitioners/accused.

23. Looking to the fact that these cases are pending since a long time, the trial Court shall dispose of these cases as expeditiously as possible. The trial Court shall not be influenced by any of the observations in this order while deciding the trial.

. Rule discharged in both the petitions.

. Authenticated copy of this order be made available to the parties.

[V.K.TAHIRLAMANI,J.]